IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.46898 of 2005
LALAN YADAV & ORS
Versus
THE STATE OF BIHAR & ANR

For the petitioner : Mr. Raj Kishore Prasad, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P. No. 2 : Mr. Raghav Prasad, Advocate

O R D E R

All the 13 petitioners who figure as accused in Protest Petition No. C 1275 of 2004 have prayed for the quashing of the entire criminal proceeding of Maharajganj P.S. Case No. 23 of 2003 arising out of Complaint Case No. 1390 of 2002 including the order dated 10.2.2005 passed by Sri P. Mishra, the then Judicial Magistrate, 1st Class, Siwan, taking cognizance for offences under sections 465, 467, 468, 420 and 120B I.P.C.

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Complainant Rajendra Yadav, impleaded herein as O.P. No. 2, filed the aforesaid complaint stating that the land in question before the abolition of the *zamindari* system had been settled in the name of his ancestors Gulajari Yadav and others by the erstwhile *zamindar* and the settlees came in possession over the said land. The land in question appertains to *Khata* No. 45/21, survey plot no. 548 in village Pipra P.S. Darunda in the district of Siwan. It is said that after the settlement, the name of Guljari Yadav and others were recorded in Register II by the Circle Officer and that the complainant was the heir of the

aforesaid Guljari Yadav while witness nos. 1 and 3 are heirs of *khatiyani raiyats* . It has been alleged that petitioner no. 1, Lalan Yadav, in connivance with the other accused persons in order to usurp the land of the complainant prepared a false sale deed and when the complainant came to know about this he went to Maharajaganj Registration Office and got the relevant information from which it transpires that petitioner no. 1 had executed several sale deeds in favour of certain persons in *benami* by deed nos. 585 , 586, 587 and 588 dated 22.2.2001 in respect of lands appertaining to survey plot no. 548, *Khata* no. 45/21, the full and separate details regarding the alleged involvement of the petitioners in connection with the above case has been furnished. It has finally been alleged that all the accused persons conspired amongst themselves to usurp the lands of the complainant and in order to succeed with their conspiracy had got prepared 4 forged deeds.

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It appears that the aforesaid complaint was sent to the concerned police station under section 156(3) Cr.P.C. and the Maharajganj police after due investigation submitted a final form reporting the case to be false. On receipt of the final form the learned Magistrate proceeded with the pending protest petition as a complaint case and after due inquiry under section 202 Cr.P.C. took cognizance under sections 465/34 I.P.C. .

The petitioners have raised some points in their defence which actually relates to evidence. They have not annexed the statement made by the complainant on S.A. nor they have attached the statement of any of the witnesses examined at the inquiry under section 202 Cr.P.C. by the Magistrate. In that view of the matter this Court is left in the dark and is not aware of the facts as to what actual statements were made by the witnesses at the inquiry under section 202 Cr.P.C. The sale deed (Annexure 4) which is purported to be a certified copy of the sale deed no. 7230 dated 14.5.1983 and was shortly sought to be relied upon by the petitioners is a piece of evidence in defence of the petitioners which cannot be looked into at this stage.

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It was settled way back in 1963 by the Supreme Court in the case of Chandradeo Vs. Prakash Chandra (AIR 1963 SC 1430) that since the object of an inquiry under section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true the Magistrate acting under section 203 Cr.P.C. has to be satisfied by himself that there is sufficient ground for proceeding. It was further observed that in order to come to this conclusion he is entitled to consider the evidence taken by him or recorded in an inquiry under section 202 Cr.P.C. or statement made in an investigation under that section, as the case may be; he is not entitled to rely upon any

material besides this. Where there is prima facie evidence the issue of process cannot be refused. In the instant case since the Magistrate was proceeding on the protest petition as a complaint case he was required to look only into the evidence that had come on record in course of inquiry under section 202 Cr.P.C. and nothing beyond this.

I do not find any apparent illegally or irregularity in the impugned order of the learned Magistrate so as to interfere with the same, due regard being had to the discussions made above.

I find no merit in this application which is accordingly dismissed.

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Patna High Court, Patna. **(Abhijit Sinha, J.)**
Dated : The 29th of August, 2008
Sanjay Pd./A.F.R.